

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANCISCO COLON JR.,

08 CV 00182 (PAC)(GWG)

Plaintiff,

-against-

ANSWER

ALBERT FRANCO,

Defendant.
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Defendant, ALBERT FRANCO, by his attorneys, the Law Offices of ZAWACKI, EVERETT & GRAY, answering the complaint of the plaintiff herein, respectfully alleges upon information and belief as follows:

1. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph of the complaint designated "1".
2. Admits the allegations contained in the paragraphs of the complaint designated "2", "3", "4", "5", "7" and "8".
3. Denies each and every allegation contained in the paragraphs of the complaint designated "6", "14" and "15", respectfully referring all questions of law to the Court for decision at the time of trial.
4. Denies each and every allegation contained in the paragraphs of the complaint designated "9", "10", "11", "12" and "13".

AS AND FOR A FIRST AND COMPLETE AFFIRMATIVE DEFENSE

Any damages or injuries sustained by the plaintiff came about as a result of his culpable conduct as defined in CPLR Section 1411, Article 14-A, and any recovery on the part of the plaintiff shall be diminished in accordance with the guidelines set forth in that article.

AS AND FOR A SECOND AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff's injuries were caused in whole or in part by his failure to utilize seat belts at the time of the accident.

AS AND FOR A THIRD AND COMPLETE AFFIRMATIVE DEFENSE

Plaintiff is barred from bringing this action by reason of the provisions of the Comprehensive Automobile Insurance Reparations Act, Insurance Law, Article 51, Section 5102D.

AS AND FOR A FOURTH AND COMPLETE AFFIRMATIVE DEFENSE

The plaintiff herein is not entitled to recovery by reason of his failure to mitigate damages.

AS AND FOR A FIFTH AND COMPLETE AFFIRMATIVE DEFENSE

Pursuant to CPLR 4545(c), if it be determined or established that plaintiff has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under Title XVIII of the Social Security Act), workers compensation or employee benefit programs (except such collateral sources entitled by law to liens against any recovery of the plaintiff), then and in that event defendant hereby pleads in mitigation of damages the assessments of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two-year period immediately preceding the accrual of this action and

minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits and as otherwise provided in CPLR 4545(c).

WHEREFORE, defendant, ALBERT FRANCO, demands judgment dismissing plaintiff's complaint against him, together with the costs and disbursements of this action, and for any expense incurred by him in the defense thereof, including attorneys' fees.

Dated: New York, New York
January 10, 2008



By: MAURIZIO SAVOIARDO (MS-6918)

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